

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

THIS DOCUMENT RELATES TO:

Hon. Anita B. Brody

ALL ACTIONS

**RESPONSE OF THE NATIONAL FOOTBALL LEAGUE AND
NFL PROPERTIES LLC TO MOTION OF TWENTY-FOUR PLAINTIFFS TO GAIN
ACCESS TO MEDICAL, ACTUARIAL, AND ECONOMIC INFORMATION USED TO
SUPPORT THE SETTLEMENT PROPOSAL [DOC. # 6115]**

In their motion, 24 former NFL players and spouses who are plaintiffs in this litigation (“Moving Plaintiffs”), seek access to the “medical, actuarial, and economic information that has been used to support the proposed settlement.” (*See* Moving Pls.’ Mem. at 1.) Specifically, they seek the “Supporting Settlement Information [provided by proposed class counsel and counsel for the NFL Parties] to the Court-appointed mediator” which had been requested by this Court’s January 14, 2014 order. (*Id.* at 5-6.)

The National Football League (“NFL”) and NFL Properties LLC (collectively, the “NFL Parties”) do not object at this time to the production of the settlement-related documentation that the Court ordered the parties to share with the Court through the Special Master. Specifically, pending Court approval, the NFL Parties will provide the Moving Plaintiffs with the February 10, 2014 report that was prepared by their actuary and submitted to the Special Master on February 10, 2014, and supplemental information regarding the report that was requested by the Special Master and produced to him on February 24, 2014.

In agreeing to produce such materials, the NFL Parties do not concede any of the arguments made by the Moving Plaintiffs, including, but not limited to, the argument that the materials constitute judicial records. Nor do the NFL Parties believe that the materials have any bearing on the Fairness Hearing scheduled for November 19, 2014. The purpose of the actuarial report submitted by the NFL Parties to the Special Master was to assess the financial sufficiency of the previously capped settlement between the parties. Given that the settlement is now uncapped, the financial sufficiency of the settlement is not at issue. Nonetheless, the NFL Parties agree to produce the materials subject to Court approval.

The NFL Parties note that they did not provide the Court or the Special Master with any additional documentation for consideration in determining whether the Court should approve a class action settlement beyond the materials noted above that were provided to the Special Master and the materials that were publicly filed with the Court in support of the two Motions for Preliminary Approval and Conditional Certification submitted by Plaintiffs.¹

Finally, although the NFL Parties do not object at this time to disclosing these materials, the NFL Parties reserve their right to argue, should it be necessary at a later date, that the Moving Plaintiffs have not demonstrated that there is a right of access under common law or pursuant to the First Amendment to the materials requested.

¹ At the Special Master's request, the NFL Parties produced background materials summarizing certain benefits that the NFL provides to retired players, including, for example, the 88 Plan. Such background materials were not part of the "medical, actuarial, and economic information" submitted to the Special Master and thus are not responsive to the Moving Plaintiffs' requests. Moreover, the Settlement Agreement does not release claims alleging entitlement to NFL CBA Disability Benefits. (See Class Action Settlement Agreement dated as of June 25, 2014 at §18.6, MDL 2323, 12-md-02323, Doc. No. 6073-2 (E.D. Pa.).) Thus, such materials have no bearing on the Fairness Hearing.

Dated: September 2, 2014

Respectfully submitted,

/s/ Brad S. Karp

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Certificate of Service

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